



EMPLOYMENT OF FOREIGN NATIONALS



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PART 1. INTRODUCTION

Research, Education and Economics (REE) often hires foreign nationals to a variety of temporary excepted service positions. Before selecting a foreign national for Federal employment, Human Resources must ensure the foreign national is eligible for Federal employment.

PART 2. ELIGIBILITY FOR FEDERAL EMPLOYMENT

According to the U.S. Office of Personnel Management (OPM), the Federal Government gives strong priority to hiring United States citizens and nationals, however foreign nationals may be hired under certain circumstances.

Agencies considering a foreign national for Federal employment in the Competitive Service must follow usual selection procedures and also meet all three of the requirements below. In addition, agencies are responsible for applying any citizenship requirements that may appear in their individual agency's authorization and appropriation laws.

Agencies considering a foreign national for Federal employment in the Excepted Service and Senior Executive Service (SES) must meet the top two requirements below. In addition, agencies are responsible for applying any citizenship requirements that may appear in their individual agency's authorization and appropriation laws.

- **Immigration Law;**
- **Appropriations Act Ban on Paying Certain Non-Citizens; and**
- **Executive Order Restriction on Appointing Non-Citizens in the Competitive Service**

1. Immigration Law

Since the passage of the Immigration Reform Act of 1986, employers have been responsible for ensuring that the people they hire are eligible to work in the United States. Employers and all new employees are required to complete a Department of Homeland Security, U. S. Citizenship and Immigration Services, Form I-9 "Employment Eligibility Verification" and the employers appointing official must check the employee's documents to verify employment eligibility. The Immigration and Nationality Act of 1990 added other requirements. One of those requirements is that employers may not discriminate against employees by requesting more or different documents than are required. The Immigration and Nationality Act, as modified, provides at Title 8, United States Code (U.S.C.), Section 1324a, that it is unlawful for a person or other entity to employ an unauthorized alien. In 1996, Public Law 104-208 added a statement that "...the term "entity" includes an entity in any branch of the Federal Government.

Regulations that implement immigration laws are published in Title 8 of the Code of Federal Regulations (CFR). According to 8 CFR 274a, U.S. employers may only hire an individual who is:

- A citizen (either by birth or naturalization);
- Lawfully admitted for permanent residence;
- Lawfully admitted for temporary residence;
- An alien admitted or paroled into the United States as a refugee;

- An alien granted asylum;
- A fiancé, fiancée, child, or parent of an alien who was admitted under certain conditions;
- An alien who is authorized employment with a specific employer incident to status (such as on-campus part-time employment of a non-immigrant student); or
- An alien who meets other requirements that are listed in the regulations.

2. Appropriations Act Ban on Paying Certain Non-Citizens

Every year since 1939, the Congress has placed language in annual appropriation laws to prevent the use of appropriated funds in the continental United States to pay Federal employees unless they are United States citizens or meet one of several exceptions. It is the responsibility of each agency to apply the terms of this law. The Office of Personnel Management has no authority to regulate, enforce, or grant exceptions to the ban.

Current appropriations law prohibits an agency from using appropriated funds to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in the continental United States **unless such person:**

- is a citizen of the United States;
- is a person in the service of the United States on the date of enactment of the appropriations act who, being eligible for citizenship, has filed a declaration of intention to become a citizen of the United States prior to such date and is actually residing in the United States;
- is a person who owes allegiance to the United States;
- is an alien from Cuba, Poland, South Vietnam, the countries of the former Soviet Union (Armenia, Azerbaijan, Estonia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan), or the Baltic countries (Latvia, Estonia, Lithuania) **lawfully admitted to the United States for permanent residence;**
- is a South Vietnamese, Cambodian, or Laotian refugee paroled in the United States after January 1, 1975; or
- is a national of the People's Republic of China who qualifies for adjustment of status pursuant to the Chinese Student Protection Act of 1992. (This is verified by the code "EC6" on their Permanent Resident Card (I-551) under the heading "Category". Individuals whose I-551 lists "EC7" or "EC8" would also be eligible as the spouse or child or an eligible alien (Pub. L 102-404).
- The ban does not apply to citizens of Ireland, Israel, or the Republic of the Philippines, or to nationals of those countries allied with the United States in a current defense effort, or to international broadcasters employed by the United States Information Agency, or to temporary employment of translators, or to temporary employment in the field service (not to exceed 60 days) as a result of emergencies.
- The list of countries below are engaged in a defense effort with the United States.

-APPROVED COUNTRY LIST-

Argentina	Denmark	Italy	Philippines
Australia	Dominican Rep.	Japan	Poland
Bahamas	Ecuador	Korea Rep.	Portugal
Belgium	El Salvador	Latvia	Romania
Bolivia	Estonia	Lithuania	Slovak Rep.
Brazil	France	Luxembourg	Slovenia
Bulgaria	Germany	New Zealand	Spain
Canada	Greece	Netherlands	Thailand
Chile	Guatemala	Nicaragua	Tobago
Colombia	Haiti	Norway	Trinidad
Costa Rica	Honduras	Panama	Turkey
Cuba	Hungary	Paraguay	United Kingdom*
Czech Rep.	Iceland	Peru	Uruguay
			Venezuela

** Includes England, Scotland and Wales and Northern Ireland*

3. Executive Order Restriction on Appointing Non-Citizens to the Competitive Service

Executive Order 11935 (September 2, 1976) restricts the employment of non-citizens into “Competitive Service” positions covered by Title 5 of the U.S. Code. This applies to all agencies with Competitive Service positions, any place in the world. The Executive Order amended Civil Service Rule VII to include the following section:

- Excerpt from 5 CFR 7 General Provisions
- 5 CFR 7.3 Citizenship
- (a) No person shall be admitted to competitive examination unless such person is a citizen or national of the United States.
- (b) No person shall be given any appointment in the Competitive Service unless such person is a citizen or national of the United States.
- (c) OPM may, as an exception to this rule and to the extent permitted by law, authorize the appointment of aliens to positions in the Competitive Service when necessary to promote the efficiency of the service in specific cases or for temporary appointments.

The Executive order is also the basis for the following regulation:

- 5 CFR 338.101 Citizenship
- (a) A person may be admitted to competitive examination only if he is a citizen of the United States or owes permanent allegiance to the United States.
- (b) A person may be given an appointment in the Competitive Service only if he or she is a citizen of or owes permanent allegiance to the United States. However, a non-citizen

may be given an appointment in rare cases under section 316.601 of this chapter, unless the appointment is prohibited by statute.

- (c) Paragraph (b) of the section applies to reinstatement and transfer as well as to other noncompetitive appointments, and to conversion to career or career-conditional employment.

PART 3. ADMISSION TO THE UNITED STATES

Foreign nationals arrive in the United States through “Ports of Entry” which include international airports, sea ports and border crossings. Foreign nationals are subject to inspection by U.S. Customs and Border Protection (CBP) Officers. The law that requires the inspection of all persons arriving in the United States comes from the Immigration and Nationality Act (INA). These rules are incorporated into the Code of Federal Regulations [CFR] at 8 CFR 235. The following definitions are to provide users with a better understanding of the admission process.

1. Visa

Citizens of foreign countries generally need a visa to enter the United States. A visa gives a foreign national permission to apply for entry to the United States.

Under United States law the Department of State has responsibility for issuing visas, and most visas are issued at one of the Department of State embassies and consulates abroad. Therefore, when a foreign national wants to travel to the United States, they must first apply for a visa at an American embassy or consulate with jurisdiction over their place of permanent residence. A consular officer decides whether the applicant is qualified for a visa.

A visa doesn’t permit entry into the United States. A visa simply indicates that the foreign national’s application has been reviewed by a United States consular officer at an American embassy or consulate, and that the officer determines eligibility to travel to a United States port of entry for a specific purpose.

Research, Education and Economics typically employs foreign nationals on one of the following visas:

- **E-3 Australian Nationals to Work in Specialty Occupations**
- **F-1 Academic Student**
- **H-1B Specialty Occupations**
- **J-1 Visas for Exchange Visitors**
- **TN Trade Visas for Canadians**

2. Arrival/Departure Record

Upon entering the United States, a CBP Officer at the port of entry, places a small white card, Form I-94, “Arrival-Departure Record” in the foreign national’s passport. On this card, the CBP Officer records either a date or the initials D/S meaning “Duration of Status”. In most cases, a specific date will be indicated on Form I-94 (in the lower right-hand corner). If the foreign national’s I-94 contains a specific date, then that is the date by which they must leave the United States. Some students, exchange program participants, and certain temporary workers (e.g. foreign diplomats) will be admitted for “Duration of Status”. If they have D/S on their Form I-94, they may remain in the United States as long as they continue their course of studies or remain in their exchange program or qualifying employment.

Form I-94 is a very important document for the foreign national to keep in their passport since it documents their permission to be in the United States.

3. Nonimmigrant

A nonimmigrant is a foreign national seeking to enter the United States temporarily for a specific purpose. Nonimmigrants entering the United States are restricted to the activity or reason for which their visa was issued. They may have more than one type of nonimmigrant visa but are admitted in only one status.

General requirements for foreign nationals seeking temporary admission include, but are not limited to, the following:

- The purpose of the visit must be temporary;
- The foreign national must agree to depart at the end of his/her authorized stay or extension;
- The foreign national must be in possession of a valid passport;
- A foreign residence must be maintained by the foreign national, in most instances;
- The foreign national may be required to show proof of financial support;
- The foreign national must be admissible or have obtained a waiver for any ground of inadmissibility; and
- The foreign national must abide by the terms and conditions of admission.

4. Permanent Resident Card

Form I-551, "Permanent Resident Card" is issued to all permanent residents as evidence of alien registration and their permanent status in the United States. Although some Permanent Resident Cards, commonly known as "Green Cards", contain no expiration date, most are valid for 10 years. If you have been granted conditional permanent resident status, the card is valid for 2 years.

It is important that the card be up-to-date. It can be used to prove employment eligibility in the United States when completing Form I-9 for a new employer. It can also be used to apply for a Social Security Card and a state issued driver's license. The card is valid for readmission to the United States if the trip was not greater than one year in length. If a trip will last longer than one year, a reentry permit is needed.

5. Employment Authorization Document (EAD)

An Employment Authorization Document (EAD) is a card that authorizes an alien to work in the United States for a period of time, usually one year. It is also sometimes known as a work permit. The EAD or work permit, is in the form of a laminated card with the alien's name and photo and an expiration date. With the EAD, an alien may legally work in the United States for any employer until the expiration date is reached.

6. Out of Status

A United States visa allows the bearer to apply for entry to the United States in a certain classification, for a specific purpose. Each visa classification (e.g. H-1B, E-3, F-1) has a set of requirements that the visa holder must follow and maintain. When a foreign national arrives in the United States, a Department of Homeland Security, CBP Officer determines whether they will be admitted, length of stay and conditions of stay in the United States. When admitted the

foreign national is given a Form I-94 “Arrival/Departure Record”, which tells the foreign national when they must leave the United States. The date granted on the I-94 card at the port of entry governs how long they may stay in the United States. If the foreign national does not follow the requirements, stays longer than the date, or engages in activities not permitted for their particular type of visa, they violate their status and are considered “Out of Status”. Failure to maintain status can result in arrest and the foreign national may be required to leave the United States. Violation of status also can affect the prospect of readmission to the United States for a period of time, by making the foreign national ineligible for a visa.

7. Passport

An official government document that certifies one’s identity and citizenship and permits a citizen to travel abroad.

PART 4. E-3 VISA

1. Classification

The E-3 visa classification allows an employer to temporarily employ an Australian national in the United States on a nonimmigrant basis in a specialty occupation. A specialty occupation requires the theoretical and practical application of a body of specialized knowledge and a bachelor's degree or the equivalent in the specific specialty (e.g., sciences, medicine and health care, education, biotechnology, and business specialties, etc.) It has many advantages over the other types of working visas, including the ability for spouses of E-3 recipients to apply for work authorization.

Postdoctoral Research Associate positions are considered specialty occupations as defined above and in 8 C.F.R. 214.2(h)(4)(iii)(A).

There is a maximum of 10,500 E-3 visas issued annually during each fiscal year, which runs from October 1st to September 30th. The State Department will advise on their website when the quota has been reached. Spouses and children of applicants do not count against the quota, neither do applicants extending their E-3 visas who are still working for the same employer.

2. Employment Eligibility

The new E-3 visa classification currently applies only to nationals of Australia as well as their spouses and children. E-3 principal applicants must be going to the United States solely to work in a specialty occupation. The spouse and children need not be Australian citizens. However, the United States does not recognize De Facto relationships or same-sex Civil Partnerships for the purpose of immigration, and to qualify as a spouse you will need a marriage certificate from the Department of Births, Deaths and Marriages.

Australian nationals must have a background check (formerly referred to as a name trace) submitted and satisfactorily completed prior to entrance-on-duty. Once a background check is received by the ARS-Homeland Security Office, it can take 4 months to complete. Therefore, complete and submit Form ARS-230, "Non-Citizen Data Sheet", as early as possible to the Area Office point-of-contact. *(The background check should not be confused with the background investigation conducted by OPM).*

If the Australian national intends to leave the facility (e.g., vacation or international travel), the supervisor should note this in Section IV of the ARS-230 and send a copy of this form to the ARS-Homeland Security Office. Additionally, if any information changes, including visa extension, these changes should be recorded in Section III of the ARS-230 and a copy of the form sent to ARS-Homeland Security. When the foreign national's appointment ends and they have departed the facility, their ARS-230 should have the actual departure date recorded on the form and sent to ARS-Homeland Security Office.

3. Duration of Status

The validity of an E-3 visa should not exceed the validity period of the Labor Conditional Application. The Department of State and Department of Homeland Security have agreed to a 24-month maximum validity period for E-3 visas.

4. Preliminary Procedures

Obtain from Supervisor:

- Form SF-52, “Request for Personnel Action”;
- Form AD-332, “Position Description Coversheet”; and
- Position Description.

Obtain from Human Resources Specialist:

- Approval of Australian national’s qualifications; and
- Original offer letter signed by the Human Resources Specialist.

Obtain Prevailing Wage Determination:

- Instructions can be found in Part 9 of this Guide.

Prepare and Submit Form 9035E, Labor Condition Application:

- Instructions can be found in Part 9 of this Guide.

5. Filing Procedures – Initial Petition

The Australian national is responsible for obtaining their own E-3 visa. Application procedures can be found on <http://perth.usconsulate.gov/consular/visas/niv/>. The following must be done before the selectee can file for their E-3 visa:

Send to Selectee:

- Original offer letter signed by the servicing Human Resources Specialist; and
- Certified Form ETA 9035E, “Labor Condition Application”.

Obtain from Selectee:

- Copy of E-3 visa. File one copy in location files and send another copy to the servicing Human Resources Specialist.

6. E-3 Visa Renewal

E-3 applicants are admitted to the United States for a two-year period renewable indefinitely, provided the alien is able to demonstrate that he/she does not intend to remain or work permanently in the U.S.

7. Family Members

Spouses and dependent children of an E-3 visa holder are issued an E-3D visa.

The dependent must file a separate visa petition, which involves most of the same steps as the principal applicant’s petition, namely completing the required forms, paying the application fee,

and scheduling a visa interview with a U.S. consular officer. The dependent does not need to provide the principal applicant's Labor Condition Application (LCA) or evidence of employment, but needs to show that the principal applicant is the recipient of an E-3 visa by providing a copy of the visa or, if the applicant has obtained E-3 status in the U.S., the Form I-797, "Approval Notice". The dependent can apply and arrange a visa interview at the same time as the principal applicant, or can apply and be interviewed later, once the principal applicant's E-3 visa is issued. The principal applicant does not need to be present at the dependent's interview. Each dependent must make a separate visa application, but children under age 14 who are Australian citizens or permanent residents of Australia are not usually required to attend an interview.

Spouses of E-3 visa holders are entitled to work in the United States and may apply for an Employment Authorization Document (Form I-765) through USCIS. The spouse of a qualified E-3 visa holder may, upon admission to the United States, apply with the Department of Homeland Security for an employment authorization document.

8. Travel Outside the United States

An E-3 visa is a multiple-entry visa, so provided you have not changed employers or made any other changes to your immigration status, you may travel outside the U.S. and reenter on a valid, unexpired E-3 visa.

There is no limit to how long an Australian national can stay outside the U.S. or how many times they can travel outside the U.S. during the validity of the E-3 visa.

9. Completion of Employment

Once employment has ended, the Australian national has 10 days to leave the country.

PART 5. F-1 VISA

1. Classification

The F-1 visa classification is a nonimmigrant, full-time, student visa that allows foreigners to pursue education in the United States. An F-1 visa is only issued through the academic institutions. Vocational education is not excepted under F-1 visa classification.

2. Employment Eligibility

Foreign nationals must be a citizen from a country on the “Approved Country List”.

Foreign nationals from a country on the “Approved Country List”, must have a background check (formerly referred to as a name trace) submitted and satisfactorily completed prior to entrance-on-duty. Once a background check is received by the ARS-Homeland Security Office, it can take 4 months to complete. Therefore, complete and submit Form ARS-230, “Foreign National Data Sheet”, as early as possible to the Area Office point-of-contact. *(The background check should not be confused with the background investigation conducted by OPM).*

If the foreign national intends to leave the facility (e.g., vacation or international travel), the supervisor should note this in Section IV of the ARS-230 and send a copy of this form to the ARS-Homeland Security Office. Additionally, if any information changes, including visa extension, these changes should be recorded in Section III of the ARS-230 and a copy of the form sent to ARS-Homeland Security. When the foreign national’s appointment ends and they have departed the facility, their ARS-230 should have the actual departure date recorded on the form and sent to ARS-Homeland Security Office.

3. Duration of Status

Duration of status is defined as the time during which an F-1 student is pursuing a full course of study at an educational institution approved by the Service for attendance by foreign students, or engaging in authorized practical training following completion of studies. Upon completion of studies and/or authorized practical training, the student has 60-days to depart the United States.

4. Practical Training

Practical training may be authorized to an F-1 student who has been lawfully enrolled on a full time basis, in a Service-approved college, university, conservatory, or seminary for one full academic year. This provision also includes students who, during their course of study, were enrolled in a study abroad program, if the student had spent at least one full academic term enrolled in a full course of study in the United States prior to studying abroad. A student may be authorized 12 months of practical training, and becomes eligible for another 12 months of practical training when he/she change to a higher educational level. Students in English language training programs are ineligible for practical training. An eligible student may request employment authorization for practical training in a position that is directly related to his/her major area of study. There are two types of practical training: **Curricular Practical Training (CPT)** and **Optional Practical Training (OPT)**.

Curricular Practical Training – CPT:

General – An F-1 student may be authorized by the Designated School Official (DSO) to participate in a curricular practical training program that is an integral part of an established curriculum. Curricular practical training is defined to be alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school. Students who have received one year or more of full time curricular practical training are ineligible for post-completion academic training. Exceptions to the one academic year requirement are provided for students enrolled in graduate studies that require immediate participation in curricular practical training. A request for authorization for curricular practical training must be made to the DSO. A student may begin curricular practical training only after receiving his/her Form I-20 with the DSO endorsement.

Prior to employing an F-1 student for curricular practical training, a cooperative agreement must be established with the school and a copy of Form I-20 signed and dated by the DSO must be obtained from the student. Submit a copy of the Form I-20 to your servicing Human Resources Specialist. A copy of Form I-20 should be filed on the left-side of the employee's E-OPF.

Contact the Foreign Nationals Program Coordinator at 301-504-1398 prior to pursuing CPT.

Optional Practical Training – OPT:

General – An F-1 student may apply to USCIS for authorization to engage in temporary employment for optional practical training that is directly related to the student's major area of study. The student may not begin optional practical training until the date indicated on his/her Form I-766, "Employment Authorization Document". A student may be granted authorization to engage in temporary employment for optional practical training:

- during the student's annual vacation and at other times when school is not in session, if the student is currently enrolled, and is eligible for registration and intends to register for the next term or session;
- while school is in session, provided that practical training does not exceed 20 hours a week while school is in session; or
- after completion of the course of study, or, for a student in a bachelor's, master's, or doctoral degree program, after completion of all course requirements for the degree (excluding thesis or equivalent). Continued enrollment, for the school's administrative purposes, after all requirements for the degree have been met does not preclude eligibility for optional practical training. A student must complete all practical training within a 14-month period following the completion of study, except for students who qualify for an additional 17-month extension.

Termination of practical training – Authorization to engage in optional practical training employment is automatically terminated when the student transfers to another school or begins study at another education level.

Reporting Requirements – The Administrative Officer is responsible for reporting the termination or departure of an OPT employee to the DSO at the student's school if the student

terminates or departs work prior to the end of the authorized period of OPT. Reporting must be made within 48 hours of the event.

17-Month Extension of Post-Completion OPT – A qualified student with a science, technology, engineering or mathematics (STEM) degree may apply for an extension of OPT while in a valid period of post-completion OPT. The extension will be for an additional 17 months, for a maximum of 29 months of OPT, if all of the following requirements are met:

- the student has not previously received a 17-month OPT extension after earning a STEM degree; and
- the degree that was the basis for the student's current period of OPT is a bachelor's, master's, or doctoral degree in one of the degree programs on the current STEM Designated Degree Program List, published on the SEVP Web site at <http://www.ice.gov/sevis>; and
- the student's employer is registered in the E-Verify program (ARS is registered with E-Verify); and
- the employer agrees to report the termination or departure of an OPT employee to the DSO at the student's school or through any other means or process identified by DHS if the termination or departure is prior to end of the authorized period of OPT. Such reporting must be made within 48 hours of the event. An employer shall consider a worker to have departed when the employer knows the student has left the employment or if the student has not reported for work for a period of 5 consecutive business days without the consent of the employer, whichever occurs earlier.

The employment authorization period for the 17-month OPT extension begins on the day after the expiration of the initial post-completion OPT employment authorization and ends 17 months thereafter, regardless of the date the actual extension is approved.

The student is responsible for filing Form I-765, Application for Employment Authorization, with the appropriate fee, prior to the expiration date of the student's current OPT employment authorization.

Students Responsibilities:

- A student must initiate the OPT application process by requesting a recommendation for OPT from his/her DSO. Upon making the recommendation, the DSO will provide the student a signed Form I-20 indicating the recommendation.
- The student must properly file a Form I-765, "Application for Employment Authorization", with the USCIS, accompanied by the required fee for the Form I-765, and the supporting documents.
- Pre-completion students may file Form I-765 up to 90 days before being enrolled for one full academic year, provided that the period of employment will start prior to the completion of the full academic year.

- Post-completion students must properly file Form I-765 up to 90 days prior to his/her program end-date and no later than 60 days after his or program end-date. The student must also file the Form I-765 with USCIS within 30 days of the date the DSO enters the recommendation for OPT into his/her SEVIS record.

DSO Responsibilities:

- A student needs a recommendation from his/her DSO in order to apply for OPT. When a DSO recommends a student for OPT, the school assumes the added responsibility for maintaining the SEVIS record of that student for the entire period of authorized OPT.
- Prior to making a recommendation, the DSO must ensure that the student is eligible for the given type and period of OPT and that the student is aware of his/her responsibilities for maintaining status while on OPT. Prior to recommending a 17-month OPT extension, the DSO must certify that the student's degree, as shown in SEVIS, is a bachelor's, master's, or doctorate degree with a degree code that is on the current STEM Designated Degree Program List.
- The DSO must update the student's SEVIS record with the DSO's recommendation for OPT before the student can apply to USCIS for employment authorization. The DSO will indicate in SEVIS whether the employment is to be full-time or part-time, and note in SEVIS that start and end date of employment.
- The DSO must provide the student with a signed, dated Form I-20 indicated that OPT has been recommended.

USCIS Responsibilities:

- USCIS will adjudicate the Form I-765 and, if approved, issue an EAD on the basis of the DSO's recommendation and other eligibility considerations.
- The employment authorization period for post-completion OPT begins on the date requested or the date the employment authorization application is approved, whichever is later, and ends at the conclusion of the remaining time period of post-completion OPT eligibility. The employment authorization period for the 17-month OPT extension begins on the day after the expiration of the initial post-completion OPT employment authorization and ends 17 months thereafter, regardless of the date the actual extension is approved.
- USCIS will notify the applicant of the decision and, if the application is denied, of the reason or reasons for the denial.

5. Adjust Status From F-1 to H-1B

An F-1 student may be hired in a postdoctoral research associate position once his/her status has been adjusted to H-1B.

Obtain from Supervisor:

- Form SF-52, "Request for Personnel Action";

- Form AD-332, “Position Description Coversheet”;
- Position Description; and
- Letter from the supervisor stating why they wish to hire the foreign national.

Obtain from Selectee:

- Curriculum Vitae, OF-612, “Optional Application for Federal Employment”, or Resume completed in accordance with OF-510, “Applying for a Federal Job” (*ensure the country of citizenship is reflected in the application materials*);
- Form OF-306, “Declaration of Federal Employment”;
- Original transcripts; (*foreign education must be interpreted by a credential evaluation service – see part 10*);
- One-page abstract of Ph.D. dissertation;
- List of publications, presentations, honors, and awards; and
- Copy of all DD-2019 forms (front and back).

Send to Human Resources Specialist:

- Form SF-52, Form AD-332 and position description;
- Original transcripts, application materials and Form OF-306; and
- Copy of all DD-2019 forms (front and back).

Obtain from Human Resources Specialist:

- Approval of foreign national’s qualifications; and
- Copy of selectee’s offer letter that documents the appointment is tentative pending receipt of H-1B status.

When to File Petition:

- Initial petitions should be filed as soon as possible, but no more than 6 months before the proposed employment will begin. If the petition is not submitted at least 45 days before the employment will begin, petition processing and subsequent visa issuance **may not** be completed before the foreign national’s services are required.

Where to File Petition:

- I-129 Regular Mailing Address:

U.S. Citizenship and Immigration Service
California Service Center
Attn: I-129
P.O. Box 10129
Laguna Niguel, CA 92607-1012

Obtain Prevailing Wage Determination:

- Instructions can be found in Part 9 of this Guide.

Prepare and Submit Form 9035E, Labor Condition Application:

- Instructions can be found in Part 9 of this Guide.

Prepare and Submit Form I-129, Petition for a Nonimmigrant Worker:

- Below are answers to specific parts of Form I-129 that may not be clearly understood:

Part 2 – Information about this Petition

Requested Nonimmigrant Classification – H-1B1

Basis for Classification – (a) New employment

Requested Action – (b) Change the person(s) status and extend.....

Prepare and Submit H Classification Supplement

Self-explanatory

Prepare and Submit H-1B Data Collection and Filing Fee Exemption Supplement

Part A – General Information

1. Employer Information:

- | | |
|--|-----|
| a. Is the petitioner a dependent employer? | No |
| b. Has the petitioner ever been found to be a willful violator? | No |
| c. Is the Beneficiary an exempt H-1B nonimmigrant? | Yes |
| c2. Or is it because the beneficiary has a master's or higher degree in a specialty related to the employment? | Yes |

7. LCA Code:

LCA Code – 013 – Agricultural Engineer
LCA Code – 022 – Chemist
LCA Code – 040 – Agricultural Scientist
LCA Code – 041 – Biological Scientist

8. NAICS Code:

541710

Part B – Fee Exemption and/or Determination

3. Yes

Part C – Numerical Limitation Exemption Information

3. Yes

Certification

Administrative Officer must sign and date this supplement.

Prepare and Attach Transmittal Letter to Form I-129

See Appendix C – Transmittal Letter – Changing Status From J-1 to H-1B

6. Family Members

An F-2 visa is given to family members of an F-1 student.

The F-2 spouse and children of an F-1 student may not accept employment.

The F-2 spouse of an F-1 student may not engage in full-time study, and the F-2 child may only engage in full-time study if the study is in an elementary or secondary school (kindergarten through twelfth grade).

Must file Form I-539, “Application to Extend/Change Nonimmigrant Status”, to change status to H-4 visa.

PART 6. H-1B VISA

1. Classification

The H-1B visa classification allows an employer to temporarily employ a foreign worker in the United States on a nonimmigrant basis in a specialty occupation. A specialty occupation requires the theoretical and practical application of a body of specialized knowledge and a bachelor's degree or the equivalent in the specific specialty (e.g., sciences, medicine and health care, education, biotechnology, and business specialties, etc.)

Postdoctoral Research Associate positions are considered specialty occupations as defined above and in 8 C.F.R. 214.2(h)(4)(iii)(A).

Current laws limit the number of foreign workers who may be issued a visa or otherwise be provided H-1B status to 65,000 per year. However, government research organizations, such as ARS, are **not subject** to the yearly cap on the number of H-1B visas issued by USCIS.

2. Employment Eligibility

Foreign nationals must be a citizen from a country on the "Approved Country List".

Foreign nationals must have a background check (formerly referred to as a name trace) submitted and satisfactorily completed prior to entrance on duty. Once a background check is received by the ARS Homeland Security Office, it can take 4 months to complete. Therefore, complete and submit Form ARS-230, "Non-Citizen Data Sheet", as early as possible through your Area Office. *(The background check should not be confused with the background investigation conducted by OPM).*

If the foreign national intends to leave the facility (e.g., vacation or international travel), the supervisor should note this in Section IV of the ARS-230 and send a copy of this form to the ARS-Homeland Security Office. Additionally, if any information changes, including visa extension, these changes should be recorded in Section III of the ARS-230 and a copy of the form sent to ARS-Homeland Security. When the foreign national's appointment ends and they have departed the facility, their ARS-230 should have the actual departure date recorded on the form and sent to ARS-Homeland Security Office.

3. Duration of Status

The USCIS has the authority to issue H-1B visas for a maximum stay of 6 years. The initial stay may be made for up to 3 years and extensions may be made in increments of up to 3 years.

The H-1B visa must cover the period of employment. This is particularly important when hiring a Headquarters-Funded postdoc. For example, if a visa is issued from 01/01/2009 through 01/01/2011, a foreign national's entrance-on-duty date should not be changed to a date past 01/01/09 because the appointment would be less than two years. This action will violate the criteria set forth in P&P 105.1 ARS Research Associate Program, which states *"the appointment may not be for less than 2 years"*. The foreign national cannot work beyond the expiration date on the H-1B visa to meet the two year appointment requirement. Contact the Foreign Nationals Coordinator (Catherine Walker) at 301-504-1398 or cathy.walker@ars.usda.gov for exceptions to the rule.

4. Preliminary Procedures

Obtain from Supervisor:

- Form SF-52, “Request for Personnel Action”;
- Form AD-332, “Position Description Coversheet”;
- Position Description; and
- Letter from the supervisor stating why they wish to hire the foreign national.

Obtain from Selectee:

- Curriculum Vitae, OF-612, “Optional Application for Federal Employment”, or Resume completed in accordance with OF-510, “Applying for a Federal Job” (*ensure the country of citizenship is reflected in the application materials*);
- OF-306, “Declaration of Federal Employment”;
- Original transcripts; (*foreign education must be interpreted by a credential evaluation service – see part 10*);
- One-page abstract of Ph.D. dissertation;
- List of publications, presentations, honors, and awards; and
- If foreign national was previously on a J-1 Visa, copy of all DD-2019 forms (front and back).

Send to Human Resources Specialist:

- Form SF-52, Form AD-332 and position description;
- Application materials, original transcripts and Form OF-306; and
- If foreign national was previously on a J-1 Visa, copy of all DD-2019 forms (front and back).

Obtain from Human Resources Specialist:

- Approval of foreign national’s qualifications; and
- Copy of selectee’s offer letter that documents that the appointment is tentative pending receipt of H-1B status.

5. Filing Procedures – Initial Petition

When to File Petition:

- Initial petitions should be filed as soon as possible, but no more than 6 months before the proposed employment will begin. If the petition is not submitted at least 45 days before the employment will begin, petition processing and subsequent visa issuance **may not** be completed before the foreign national’s services are required.

Where to File Petition:

- I-129 Regular Mailing Address:

U.S. Citizenship and Immigration Service
California Service Center
Attn: I-129
P.O. Box 10129
Laguna Niguel, CA 92607-1012

Obtain Prevailing Wage Determination:

- Instructions can be found in Part 9 of this Guide.

Prepare and Submit Form 9035E, Labor Condition Application:

- Instructions can be found in Part 9 of this Guide.

Prepare and Submit Form I-129, Petition for a Nonimmigrant Worker:

- Below are answers to specific parts of Form I-129 that may not be clearly understood:

Part 1 – Information about the employer filing this petition

Company or Organization Name – USDA, Agricultural Research Service

Federal Employer Identification Number – 72-0564834

Part 2 – Information about this Petition

Requested Nonimmigrant Classification – H-1B1

Basis for Classification (check one)

- | | |
|------------------|--|
| Check Letter (a) | to employee a foreign national on new H-1B Visa. |
| Check Letter (b) | to extend an H-1B visa holder currently employed with ARS. |
| Check Letter (c) | to change employer of H-1B visa holder to ARS. |

Requested Action (check one)

- | | |
|------------------|---|
| Check Letter (a) | for foreign national not currently in the U.S. and ARS will be the employer. |
| Check Letter (b) | for foreign national in the U.S. on another type of visa and ARS is petitioning for their employment. |
| Check Letter (c) | to extend an H-1B visa holder employed with ARS. |

Check Letter (e)	to extend a TN (Canadian) visa holder employed with ARS and already in the U.S.
Check Letter (f)	to change the status of TN visa holder (Canadian) who is already in the U.S.

Part 3 – Information about the person(s) you are filing for

If the foreign national does not have a Social Security Number (SSN), leave this section blank (do not use the temporary SSN that HRD provides for the purpose of the SF-52 completion or payment of recruitment incentives). If the foreign national is not in the United States at the time the H-1B paperwork is prepared, the foreign national should apply for an SSN as soon as possible after arriving.

Block “A number (if any)” = This is the alien number and can be left blank if they do not have one.

Part 4 – Processing Information

Question #1 – If the foreign national is not currently in the U.S., check that you want the consulate office notified of petition approval. Provide the address of the consulate office in the country where the foreign national most closely resides. For U.S. embassies in other countries, log onto <http://usembassy.state.gov/> . The foreign national will obtain their visa from the embassy or consulate indicated in this part. The consulate may require that the foreign national bring the entire Form, I-797, “Notice of Action”, approved by USCIS before issuing a travel visa.

Question #5 – For initial appointments only, check “yes” if family members will accompany the foreign national and state the number of family members that will accompany the foreign national.

Part 5 – Basic information about the proposed employment and employer

NAICS Code = 541710

Type of Petitioner = Organization

Type of Business = Agricultural Research – Federal Government

Year Established = 1862

Current Number of Employees = 8000

Gross Annual Income = N/A

Net Annual Income = N/A

Part 6 – Signature

As the preparer of the form and representative of the agency, it is suggested that the Administrative Officer sign Form I-129 on behalf of the location.

Prepare and Submit H Classification Supplement:

Classification Sought: H1-B1 Specialty Occupation

Section 1 – Complete this section if filing for H-1B classification

Statement for H-1B specialty occupations only – sign form

Statement for H-1B specialty occupations and U.S. Department of Defense projects – Guidance from Financial Management Division as of 5-18-2005, is that we may sign and date this section.

Prepare and Submit H-1B Data Collection and Filing Fee Exemption Supplement:

Part A – General Information

1. Employer Information:

- | | |
|---|-----|
| a. Is the petitioner a dependent employer? | No |
| b. Has the petitioner ever been found to be a willful violator? | No |
| c. Is the beneficiary an exempt H-1B nonimmigrant? | Yes |
| c2. Because the beneficiary has a master's or higher degree in a specialty related to the employment? | Yes |

7. LCA Code:

LCA Code – 013 – Agricultural Engineer
LCA Code – 022 – Chemist
LCA Code – 040 – Agricultural Scientist
LCA Code – 041 – Biological Scientist

8. NAICS Code:

541710

Part B – Fee Exemption and/or Determination

3. Yes

Part C – Numerical Limitation Exemption Information

3. Yes

Certification

Administrative Officer must sign and date H Classification Supplement.

Prepare and Attach Transmittal Letter to Form I-129:

See Appendix A – Transmittal Letter – Initial Petition for H-1B Status

6. Preliminary Procedures – Extension of Status

Obtain from Employee:

- Copy of Form I-94, “Nonimmigrant Arrival/Departure Record”.

Obtain from Supervisor:

- Letter explaining the reasons for the extension.

7. Filing Procedures – Extension of Status

If an employer filed for an extension of status for their employee, but have not received a decision by the time his/her status expires, the employee may continue to be lawfully employed for a period of up to **240** days, until USCIS makes a decision on the application, or until the reason for the requested extension has been accomplished – whichever comes first when the following apply: 1) USCIS receives a Form I-129 petition to extend an employee’s status before his/her status expires; 2) the employee has not violated the terms of his/her status; and 3) the employee meets the basic eligibility requirements.

If the request for extension is denied and the employee’s status has already expired while the foreign national is in the United States, the foreign national is considered **“out of status”** as of the date the H-1B visa expired. If this should happen, the foreign national will be required to cease employment immediately and depart from the United States upon denial of the petition.

When to File Petition:

- To avoid disruption of authorized employment, employers are encouraged by USCIS to file a petition to extend the employee’s status no later than 60 days before their I-94 expires. However, employers may file 6 months before their I-94 expires.

Where to File Petition:

- I-129 Regular Mailing Address:

U.S. Citizenship and Immigration Service
California Service Center
ATTN: H-1B Extensions
P.O. Box 10129
Laguna Niguel, CA 92607-1012

Obtain Prevailing Wage Determination:

- Instructions can be found in Part 9 of this Guide.

Prepare and Submit Form 9035E, Labor Condition Application:

- Instructions can be found in Part 9 of this Guide.

Prepare and Submit Form I-129, Petition for a Nonimmigrant Worker:

- Below are answers to specific parts of Form I-129 that may not be clearly understood:

Part 2 – Information about this Petition

Request Nonimmigrant Classification – H-1B1

Basis for Classification – (b) Continuation of previously approved employment
without change with the same employer

Requested Action – (c) Extend the stay of the person(s) since they now hold this status

Prepare and Attach Transmittal Letter to Form I-129:

- See Appendix B – Transmittal Letter – Extension of H-1B Status

8. Filing Fees

Information on processing fees can be found at <http://www.uscis.gov/forms>. Always check the USCIS website prior to case submission since fees are subject to change.

All checks are made payable to “**Department of Homeland Security**”.

Each filing fee(s) must be issued on an individual check or money order.

Filing fee(s) for employees are paid by the management unit.

Base petition fee Form I-129 is **\$320**.

H-1B petitioners are required to pay the Fraud Prevention and Detection Fee mandated by the H-1B Visa Reform Act of 2004. A separate check or money order in the amount of **\$500** is required for all **new** H-1B petitions for which ARS is the employer. The fee also applies if the foreign national worked for a different employer on an H-1B. This fee **does not** apply when filing for an extension of stay for a current foreign national employed with ARS.

INFORMATION FOR CHECK WRITERS: The DHS Tax identification number is 53-0199943.

9. Premium Processing

Premium Processing guarantees that USCIS will issue one of the following within **15 calendar days**: a) approval notice; b) notice of intent to deny; c) request for evidence; or d) notice of investigation for fraud or misrepresentation.

The fee for premium processing is **\$1,000** and must be paid by separate check or money order. It cannot be combined with any other fee such as Base Petition Fee or the Fraud Prevention and Detection Fee.

Form I-907, “Request for Premium Processing Service”, must be filed with Form I-129. The form can be downloaded from the USCIS Website at <http://www.uscis.gov/forms>. Please print instructions to ensure filing directions and mailing addresses are the most current.

If USCIS cannot issue one of the above within the **15 calendar day** processing period, it will refund the premium processing fee and your case will continue to receive faster processing.

The Premium Processing Service fee may not be waived.

In addition to expedited processing, employers that participate in the program may use a dedicated phone number and e-mail address to check on the status of their petition or ask any other questions concerning their petition. The dedicated phone number, e-mail and mailing address for each USCIS Service Center can be found in the instructions for Form I-907.

Where to File Petition:

- I-129/I-907 Premium Processing Address:

Premium Processing Service
U.S. Citizenship and Immigration Service
California Service Center
P.O. Box 10825
Laguna Niguel, CA 92607
(Please note the type of I-129 in the attention line)

Prepare and Submit Form I-907, Request for Premium Processing Service:

- Below are answers to specific parts of Form I-907 that may not be clearly understood:

Part 1 – Information about you

Name of Company Contact – USDA, Agricultural Research Service

IRS Tax Number – 53-0199943

Part 2 – Information about request

1. I-129
2. Skip
3. Visa Classification (e.g. H-1B, TN)
4. USDA, Agricultural Research Service
5. USDA, Agricultural Research Service

10. Notice of Action – Form I-797

Once Form I-129 is approved by USCIS, Form I-797, “Notice of Action”, is issued to the petitioner who will provide the foreign national with the receipt number found on the notice. Once the foreign national obtains the receipt number, they can schedule an interview at an American embassy or consulate with jurisdiction over their place of permanent residence.

Apparently Form I-797 is no longer needed for the visa applicant's interview. The petition approval is now verified in the Department of State's system called "Petition Information Management Service (PIMS)". However, I would still detach the lower tear-off portion of Form I-797 and send to the foreign national.

Administrative Officers must maintain the original Form I-797 in location files and send the servicing Human Resources Specialist a copy of Form I-797 (front & back). Human Resources Specialist will file a copy of Form I-797 in the employee's OPF.

11. Family Members

An H-4 visa is issued by the USCIS to immediate family members (spouse and children under 21 years of age) of the H-1B visa holder. These visas are usually issued by the local U.S. consulate or embassy office abroad.

To apply for an H-4 visa, the foreign national should visit the website of the U.S. consulate or embassy to see what documents are required when filing for a dependent H-4 visa. Typically, the following information is required:

- A valid passport for each applicant over age 14
- Completed nonimmigrant visa application Form DS-156 (separate form for each applicant)
- Completed nonimmigrant visa applications Form DS-157 (submitted by male applicants between age 16 and 45)
- Original receipt of application fee
- Copy of offer letter
- Original birth certificate
- Original marriage certificate

To apply for an extension of stay once in the United States, dependents must complete Form I-539, "Application to Extend/Change Nonimmigrant Status". The form can be filed in one of the following manners: along with the H-1B employee's extension application, including evidence that the employee's Form I-129 extension is pending; or with a copy of the employee's Form I-94 or approval notice showing that he/she has already been granted status to the period requested in the application.

Filing fee for Form I-539 is **\$300** and is paid by the H-1B status employee.

12. Travel Outside the United States

An H-1B visa allows a foreign national holding that status to re-enter the U.S. during validity period of visa and approved petition.

13. USCIS Notification Letter

Notify the USCIS when a foreign national is no longer employed.

See Appendix C – Transmittal Letter – Notification of Separated Employee

PART 7. J-1 VISA

1. Classification

The J-1 visa classification is for persons seeking entry into the United States to participate in an approved exchange visitor program for the purpose of teaching, lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training. The exchange visitor program is designed to promote the interchange of persons, knowledge, and skills in the fields of education, arts, and sciences between the United States and other countries.

2. Employment Eligibility

Foreign nationals must be a citizen from a country on the “Approved Country List”.

Foreign nationals from a country on the “Approved Country List”, must have a background check (formerly referred to as a name trace) submitted and satisfactorily completed prior to entrance-on-duty. Once a background check is received by the ARS-Homeland Security Office, it can take 4 months to complete. Therefore, complete and submit Form ARS-230, “Non-Citizen Data Sheet”, as early as possible to the Area Office point-of-contact. *(The background check should not be confused with the background investigation conducted by OPM).*

If the foreign national intends to leave the facility (e.g., vacation or international travel), the supervisor should note this in Section IV of the ARS-230 and send a copy of this form to the ARS-Homeland Security Office. Additionally, if any information changes, including visa extension, these changes should be recorded in Section III of the ARS-230 and a copy of the form sent to ARS-Homeland Security. When the foreign national’s appointment ends and they have departed the facility, their ARS-230 should have the actual departure date recorded on the form and sent to ARS-Homeland Security Office.

After a J-1 Student completes all the requirements for their Ph.D., he or she may come to ARS for the purpose of academic training or postdoctoral employment.

3. Academic Training

A student, other than a student intern, may be authorized to participate in an academic training program for wages:

- During his/her studies (i.e. STEP and SCEP); or
- Commencing not later than 30 days after completion of his/her studies (i.e. Post Doc), if the criteria, time limitations, procedures, and evaluation requirements are satisfied.

Criteria:

- Student is primarily in the United States to study rather than engage in academic training;
- Student is participating in academic training that is directly related to his/her major field of study at the post-secondary accredited academic institution listed on his/her Form DS-2019;
- Student is in good academic standing with the post-secondary accredited academic institution; and

- Student receives written approval in advance from the responsible officer for the duration and type of academic training.

Time Limitation:

The student is authorized to participate in academic training for the length of time necessary to complete the goals and objectives of the training, provided that the amount of time for academic training:

- Is approved by the academic dean or advisor and approved by the responsible officer;
- For undergraduate and pre-doctoral training, does not exceed 18 months, including any prior academic training in the United States or the period of full course of study in the United States, whichever is less; except that additional time for academic training is allowed to the extent necessary for the exchange visitor to satisfy the mandatory requirements of his/her degree program in the United States;
- For post-doctoral training, does not exceed a total of 36 months, including any prior academic training in the United States as an exchange visitor, or the period of the full course of study in the United States, whichever is less.

Procedures:

To obtain authorization to engage in academic training:

Student must:

- Present to the responsible officer a letter of recommendation from the student's academic dean or advisor setting forth: 1) goals and objectives of the specific academic training program; 2) description of the academic training program, including its location, the name and address of the training supervisor, number of hours per week, and dates of the training; 3) how academic training relates to the student's major field of study; and 4) why it is an integral or critical part of the academic program of the student.

Responsible Officer must:

- Determines if and to what extent the student has previously participated in academic training as a student, in order to ensure the student does not exceed the permitted period as described above;
- Reviews the letter of recommendation from student's academic dean or advisor;
- Makes written determination of whether the academic training currently being requested is warranted and the criteria and time limitation are satisfied;
- Issues academic training authorization letter and DS-2019.

Evaluation Requirements:

The sponsor (university officials) must evaluate the effectiveness and appropriateness of the academic training in achieving the stated goals and objectives in order to ensure the quality of the academic training program.

Agency Responsibilities:

ARS Scientists/Mentor must:

- Identifies potential J-1 student for a STEP, SCEP or Post Doc position and
- Provides evaluations of progress to the responsible official upon request;

Administrative Officer must:

- Ensures J-1 student is a citizen from a country on the “Approved Country List”;
- Discusses position with the universities’ responsible officer to ensure the position is related to the student’s major field of study and meets additional program requirements;
- Obtains an authorized letter from the responsible officer that states ARS as the authorized employer for academic training and a copy of Form DS-2019 annotating “Academic Training”;
- Obtains resume, Form OF-306, and copy of transcripts;
- Obtains from Ph.D. students a list of publications, presentations, honors/awards, and one-page dissertation;
- Obtains background check; and
- Submits Form SF-52, Form AD-332, position description, Form DS-2019, and academic training authorization letter to the servicing Human Resources Specialist.

Human Resources Specialist must:

- Issues tentative offer letter pending favorable results of background check;
- Obtains Form SF-52, Form AD-332, position description, Form DS-2019, and academic training authorization letter;
- Ensures criteria is met to employ a J-1 student for academic training; and
- Ensures Form DS-2019 and academic training authorization letter are filed in OPF.

4. Employment

A J-1 Exchange Visitor (student) may be hired in a postdoctoral research associate position if the following conditions are met:

- J-1 student has completed his/her Ph.D.;
- J-1 student is not subject to the two-year foreign residence requirement or obtains a waiver of the two-year foreign residence requirement if subject to the requirement; and
- Adjust J-1 status to H-1B status.

Completion of Ph.D.:

Prior to academic training, the student must provide proof that all requirements for their Ph.D have been met.

Waiver of Two-Year Foreign Residence Requirement:

The J-1 student is responsible for obtaining a waiver of the two-year foreign residence requirement. There are five grounds for a waiver:

- No Objections Statement
- Request by an Interested Government Agency
- Persecution
- Exceptional hardship to a United States citizen's spouse or child of an exchange visitor
- Request by a designated State Department of Public Health or its equivalent

Request for waiver information can be found at:

http://travel.state.gov/visa/temp/info/info_1296.html and
<https://j1visawaiverrecommendation.state.gov>

Processing timeframes will vary and can run between 3 to 8 weeks.

Adjust J-1 Status to H-1B Status:

Obtain from Supervisor:

- Form SF-52, "Request for Personnel Action";
- Form AD-332, "Position Description Coversheet";
- Position Description; and
- Letter from the supervisor stating why they wish to hire the foreign national.

Obtain from Selectee:

- Curriculum Vitae, OF-612, "Optional Application for Federal Employment", or Resume completed in accordance with OF-510, "Applying for a Federal Job" (*ensure the country of citizenship is reflected in the application materials*);
- Form OF-306, "Declaration of Federal Employment";
- Original transcripts; (*foreign education must be interpreted by a credential evaluation service – see part 10*);
- One-page abstract of Ph.D. dissertation;
- List of publications, presentations, honors, and awards; and
- Copy of all DD-2019 forms (front and back).

Send to Human Resources Specialist:

- Form SF-52, Form AD-332 and position description;
- Original transcripts, application materials and Form OF-306; and
- Copy of all DD-2019 forms (front and back).

Obtain from Human Resources Specialist:

- Approval of foreign national's qualifications; and
- Copy of selectee's offer letter that documents the appointment is tentative pending receipt of H-1B status.

When to File Petition:

- Initial petitions should be filed as soon as possible, but no more than 6 months before the proposed employment will begin. If the petition is not submitted at least 45 days before the employment will begin, petition processing and subsequent visa issuance **may not** be completed before the foreign national's services are required.

Where to File Petition:

- I-129 Regular Mailing Address:

U.S. Citizenship and Immigration Service
California Service Center
Attn: I-129
P.O. Box 10129
Laguna Niguel, CA 92607-1012

Obtain Prevailing Wage Determination:

- Instructions can be found in Part 9 of this Guide.

Prepare and Submit Form 9035E, Labor Condition Application:

- Instructions can be found in Part 9 of this Guide.

Prepare and Submit Form I-129, Petition for a Nonimmigrant Worker:

- Below are answers to specific parts of Form I-129 that may not be clearly understood:

Part 2 – Information about this Petition

Requested Nonimmigrant Classification – H-1B1

Basis for Classification – (a) New employment

Requested Action – (b) Change the person(s) status and extend.....

Prepare and Submit H Classification Supplement

Self-explanatory

Prepare and Submit H-1B Data Collection and Filing Fee Exemption Supplement

Part A – General Information

1. Employer Information:

- | | |
|---|-----|
| a. Is the petitioner a dependent employer? | No |
| b. Has the petitioner ever been found to be a willful violator? | No |
| c. Is the Beneficiary an exempt H-1B nonimmigrant? | Yes |

c2. Or is it because the beneficiary has a master's or higher degree in a specialty related to the employment? Yes

7. LCA Code:

LCA Code – 013 – Agricultural Engineer
LCA Code – 022 – Chemist
LCA Code – 040 – Agricultural Scientist
LCA Code – 041 – Biological Scientist

8. NAICS Code:

541710

Part B – Fee Exemption and/or Determination

3. Yes

Part C – Numerical Limitation Exemption Information

3. Yes

Certification

Administrative Officer must sign and date this supplement.

Prepare and Attach Transmittal Letter to Form I-129

See Appendix C – Transmittal Letter – Changing Status From J-1 to H-1B

5. Family Members

Spouses and/or children under the age of 21 who accompany or join the principal exchange visitor in the United States for the duration of his/her stay, require a derivative J visa called “J-2”.

The spouse and/or children of an exchange visitor in the U.S. may not work under J-2 status. If employment is desired, the dependent must make an application to USCIS and be approved for permission to work.

PART 8. TN VISA

1. Classification

The TN visa classification permits qualified Canadian and Mexican citizens to seek temporary entry into the United States to engage in business activities at a professional level. The TN classification was created following Congressional approval of the North American Free Trade Agreement (NAFTA) on December 8, 1993.

2. Employment Eligibility

The TN visa allows citizens of Canada and Mexico to apply for work in the U.S. as NAFTA professionals. However, since Mexico is no longer on the “Approved Country List”, REE can only hire citizens from Canada.

Canadian citizens, not permanent residents of Canada are eligible for a TN visa.

Only professional positions specified in Appendix 1603.D.1 of the NAFTA treaty can be filled using the TN visa classification. A professional position is one that requires at least a bachelor’s degree or appropriate credentials demonstrating status as a professional. Among the types of professionals who are eligible to seek admission as TN nonimmigrant are accounts, engineers, lawyers, pharmacists, **scientists**, and teachers.

REE can fill postdoctoral research associate positions with a Canadian citizen that is eligible to obtain a TN visa.

3. Duration of Status

A TN visa can be issued for a period not to exceed three years and may be extended in increments of up to three years. (*New*)

There is no limit on the number of times a person can apply for a TN visa or seek admission in TN status.

4. Filing Procedures – Initial Stay

Canadian citizens usually do not need a visa as a NAFTA Professional, although a visa can be issued to qualified TN visa applicants upon request. Canadians residing in another country with a non-Canadian spouse and/or children would need a visa which will enable the spouse and children to apply for a visa so they can either accompany or join the NAFTA professional, as a TD visa holder.

Canadian citizens are not required to apply for a TN visa with a U.S. consulate or file a petition with USCIS. A request for TN status may be made at a United States Class-A port-of-entry, at a United States airport handling international traffic, or at a United States pre-clearance/pre-flight station. The following documentation must be provided to a U.S. Customs and Border Protection Officer (CBP):

- Proof of Canadian citizenship (passport);

- Original letter of employment signed by the servicing Human Resources Specialist;
- Copy of position description;
- Proof of college degree related to the position (original and one copy). Degrees not received from an educational institution in Canada, must provide an evaluation of foreign educational credentials;
- Fee of \$50 U.S. dollars (*typically paid by management unit*)

The CBP Officer will determine why the Canadian is coming to the United States, what documents are required, and how long the Canadian should be allowed to initially stay in the United States. If allowed to proceed, the officer will stamp the Canadian's passport and customs declaration form and issued a completed Form I-94. The completed Form I-94 will show what immigration classification the Canadian is given (TN) and how long they are allowed to stay in the United States.

5. Filing Procedures – Extension of Stay

If a supervisor wants to extend the appointment of an employee in TN status, the extension of stay may be requested by filing Form I-129, "Petition for Non-immigrant Worker", with the USCIS; or the employee can return to Canada and re-apply at the port of entry with the same documentation that was required for the original application.

Filing through USCIS:

The employee must be physically present in the United States at the time the extension of stay is filed. The extension must be filed prior to the expiration of the employee's TN status. The employer must take the following steps:

- File Form I-129, "Petition for Non-immigrant Worker", with USCIS;
- Include a copy of Form I-94, "Nonimmigrant Arrival/Departure Record";
- Include a letter explaining the reasons for the extension; and
- Include a check in the amount of **\$320**, made payable to the "Department of Homeland Security"

Prepare and Submit Form I-129, Petition for a Nonimmigrant Worker:

Below are answers to parts of Form I-129 that may not be clearly understood.

Part 1 – Information about the employer filing this petition

2. Company or Organization Name – USDA, Agricultural Research Service
Federal Employer Identification Number – 72-0564834

Part 2 – Information about this Petition

1. Requested Nonimmigrant Classification – TN
2. Basis for Classification – (b) continuation of previously approved employment without change with the same employer

3. Petition Receipt Number – enter prior receipt number
4. Prior Petition – leave Blank
5. Requested Action – (e) – extend the status of a nonimmigrant classification based on a Free Trade Agreement
6. Total number of workers in petition – One (1)

Part 3 – Information about the person(s) you are filing for

1. U.S. Social Security Number (if any)

If the foreign national does not have a Social Security Number (SSN), leave this section blank. Do not use the temporary SSN that HRD provides for the purpose of processing the personnel action and other personnel documents. The foreign national should apply for an SSN as soon as possible after arriving.

A Number (if any)

This block is used for the alien's number and can be left blank if they do not have one.

Part 4 – Processing Information

Self-explanatory

Part 5 – Basic information about the proposed employment and employer

3. LCA Case Number
4. NAICS Code – 541710
9. Type of Petitioner – Organization
10. Type of Business – Agricultural Research – Federal Government
11. Year Established – 1862
12. Current Number of Employees – 8000
13. Gross Annual Income – N/A
14. Net Annual Income – N/A

Part 6 – Signature

As the preparer of the form and representative of the agency, it is suggested that the Administrative Officer sign the form on behalf of the location.

Form I-129 Supplement – Nonimmigrant Classification Based on Free Trade Agreement:

This supplement is self-explanatory and must be completed and submitted with Form I-129.

Filing at Border:

A Canadian citizen may request an extension of stay at the port of entry if previously admitted to the U.S. in TN status and has not violated TN status while in the U.S. The following documentation must be provided to a U.S. Customs and Border Protection Officer :

- Proof of Canadian citizenship (passport or birth certificate);
- Original letter of extension signed by the servicing Human Resources Specialist;
- Copy of position description;
- Proof of degree related to the position (original and one copy). Degree not received from an educational institution in Canada, must provide an evaluation of foreign educational credentials;
- Fee of **\$50** U.S. dollars (*typically paid by management unit*)

6. Extension of Stay Letter

A TN visa holder who has their stay extended will need to attach a transmittal letter with Form I-129, “Petition for a Nonimmigrant Worker”.

See Appendix E – Extension of Status – TN Visa Holder.

7. Family Members

Dependents of Canadian citizens with Canadian citizenship do not need visas. They can either apply for TD status at the port-of-entry at the same time as the TN or at a later time with copies of the TN’s I-94 card and employment letter. They must show proof of relationship to the TN, as well as Canadian citizenship. There is no fee required for the TD application, except for a small fee of \$6.00 for the I-94 card.

Dependents of Canadian citizens who do not hold Canadian citizenship are required to have a TD visa. They must apply at a U.S. embassy or consulate prior to admission to the U.S. Their visa application should include the TN’s letter of employment, copy of the TN’s I-94 card (if already in the U.S.) and a copy of the marriage or birth certificate.

Spouses and Children cannot work while in the United States.

PART 9. LABOR CONDITION APPLICATION PROCESS

Obtain Wage Results:

- Log onto – <http://www.foreignlaborcert.doleta.gov>
- Scroll – left-hand side of the page under Quick Links/Wage Information
- Click – Online Wage Library
- Click – Click here to exit this page
- Click – FLC Wage Search Wizard
- Select – State/Territory
- Click – Continue
- Select a Data Source – ACWIA-Higher Education Database
- Select an area based on either Country/Township or BLS Areas
- Select – Occupation from the drop-down list
- Click – Search
- Print – Foreign Labor Certification (FLC) wage results

The Department of Labor will e-mail a confirmation notice once the form has been received and submitted for processing. You can check the status of the LCA using your on-line account at <http://icert.doleta.gov/>. Once the request has been certified, print off a copy and file with Form I-129.

Post a copy of Form ETA 9035 at the location for 10 days. If applicable, provide the bargaining unit representative with a copy.

Be sure to make copies of the application materials for location records as well as the USCIS petition.

Prepare and Submit Form 9035E, Labor Condition Application:

The Labor Condition Application (LCA) must be filed using DOL's new online iCERT system. The iCERT user manual can be found at http://www.foreignlaborcert.doleta.gov/pdf/iCERT_LCA_Module_External_User_Guide_April_2009.pdf

- Log onto – <http://www.foreignlaborcert.doleta.gov/>

- Scroll – left-hand side of the page under Quick Links/FLC Applications
- Click – iCERT System

Below is information to specific sections of Form ETA 9035E that may not be clearly understood:

Section B – Temporary Need Information

2. SOC (ONET/OES) Code – click the Search SOC/O...block to find the occupational title code. Once found, enter that code in the box.

Section C – Employer Information

11. Federal Employer Identification Number (FEIN from IRS) – 72-0564834

12. NAICS Code – 541710

Section G – Employment and Prevailing Wage Information

b. Prevailing Wage Information

- 7. State Workforce Agency which issued prevailing wage – N/A
- 7a. Prevailing wage tracking number (if applicable) – N/A
- 11. Prevailing Wage Source – Other
- 11a. Year Source Published – Enter current year
- 11b. Specify Source – Foreign Labor Certification Data Center

Section I – Additional Employer Labor Condition statements H-1B Employers

- 1. Is the employer H-1B dependent? No
- 2. Is the employer a willful violator? No

PART 10. FOREIGN EDUCATION

Applicants may qualify for many Federal jobs based on academic study completed in accredited colleges or universities. This means education completed in a college or university accredited by a national or regional accrediting association in the United States.

Education completed in foreign colleges or universities may be used to meet Federal job requirements for positions if the applicant can show that foreign education is comparable to education received in accredited educational institutions in the United States. It is the responsibility of the applicant to provide such evidence when applying for Federal jobs.

Education completed outside of the United States must be deemed equivalent to that gained in conventional/accredited U.S. education programs to be acceptable for Federal employment. Most foreign education is not accredited by an accrediting body that is recognized by the Secretary of the U.S. Department of Education. A few medical schools are accredited under country standards that have been determined to be “comparable” to U.S. standards by the U.S. Department of Education’s National Committee on Foreign Medical Education and Accreditation. For foreign education that is not so accredited, agencies should follow the provisions below before considering such education for Federal employment.

To be acceptable, the foreign credential evaluation must include/describe the following:

- The type of education received by the applicant;
- The level of education in relation to the U.S. education system, and state that its comparability recommendations follow the general guidelines of the U.S. National Council for the Evaluation of Foreign Educational Credentials;
- The content of the applicant’s educational program earned abroad and the standard obtained;
- The status of the awarding foreign school’s recognition and legitimacy in its home country’s education system; and
- Any other information of interest such as what the evaluation service did to obtain this information, the qualifications of the evaluator, and any indications as to other problems such as forgery.

Note:

Before asking an applicant to provide foreign credential evaluation documentation from institutions that are located outside the United States (Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, Republic of Palau, Federated States of Micronesia, Commonwealth of the Northern Mariana Islands, and Republic of the Marshall Islands), it is suggested that the human resources specialist determine if the institution is accredited by the U.S. Department of Education.

To determine if the institution is accredited, log onto <http://ope.ed.gov/accreditation> and perform a search.

The accreditation database is available to us by the U.S. Department of Education’s Office of Postsecondary Education. Each of the postsecondary educational institutions and programs contained within the database is, or was, accredited by an accrediting agency or state approval agency recognized by the U.S. Secretary of Education as a “reliable authority as to the quality of

postsecondary education” within the meaning of the Higher Education Act of 1965, as amended (HEA). The database does not include a number of postsecondary educational institutions and programs that elect not to seek accreditation but nevertheless may provide a quality postsecondary education.

There are a number of private organizations that evaluate foreign educational credentials for employment and other purposes. All operate on a fee based on the extent of the education to be evaluated. The following website contains a listing of companies that perform this function.
<http://www.afm.ars.usda.gov/hrd/jobs/FOREIGN.HTM>

PART 11. USEFUL WEBSITES

Employment of Foreign Nationals:

- <http://www.afm.ars.usda.gov/hrd/jobs/visa/visacurrentdoc.pdf>

USDA, Agricultural Research Service:

- <http://www.ars.usda.gov>

Foreign Education Credential Evaluation Services:

- <http://www.afm.ars.usda.gov/hrd/jobs/FOREIGN.HTM>

ARS Office of Homeland Security:

- <http://www.arsnet.usda.gov/ohs/>

U.S. Office of Personnel Management:

- <http://www.opm.gov>

U.S. Citizenship and Immigration Services:

- <http://uscis.gov/graphics/index.htm>

Department of Labor:

- <http://www.dol.gov>

U.S. State Department:

- <http://www.state.gov>

Embassies:

- <http://usembassy.state.gov/>

PART 12. FORMS

1. United States Department of State

http://www.travel.state.gov/visa/frvi/forms/forms_1342.html

- DS-156 Nonimmigrant Visa Application
- DS-157 Supplemental Nonimmigrant Visa Application
- DS-2019 Certificate of Eligibility for Exchange Visitors Status (previously IAP-66)
- DS-3035 J-1 Visa Waiver Recommendation Application Instructions

2. United States Department of Labor

<http://www.foreignlaborcert.doleta.gov/#content>

- ETA-9035E Labor Condition Application

3. United States Citizenship & Immigration Service

<http://www.uscis.gov/portal/site/uscis>

- I-94 Nonimmigrant Arrival/Departure Record (*issued by ICE Officer*)
- I-129 Petition for a Nonimmigrant Worker
- I-539 Application to Extend/Change Nonimmigrant Status
- I-551 Permanent Resident Card (*issued by USCIS*)
- I-765 Application for Employment Authorization
- I-766 Employment Authorization Card (*issued by USCIS*)
- I-797A Notice of Action (*issued by USCIS*)
- I-824 Application for Action on an Approved Application or Petition
- I-907 Request for Premium Processing Service

APPENDIX A
~Transmittal Letter – Initial Petition for H-1B Status~

U.S. Citizenship and Immigration Services
(*use appropriate address*)

To Whom It May Concern:

The United States Department of Agriculture, Agricultural Research Service, submits **an original and one copy** of the following documentation in support of an H-1B petition for (NAME) as a non-immigrant worker.

1. Form I-129, Petition for a Nonimmigrant Worker;
2. H Classification Supplement to Form I-129;
3. H-1B Data Collection and Filing Fee Exemption Supplement (no fee required for ARS);
4. Base Petition Fee: check # _____, dated _____, for \$320;
5. Fraud Prevention and Detection Fee:
check # _____ dated _____, for \$500 (*if applicable*);
6. Form I-907, Request for Premium Processing Service Fee:
check # _____, dated _____, for \$1000 (*if applicable*);
7. Entrance-On-Duty Letter;
8. Certified Labor Condition Application Form, ETA-9035;
9. Copies of application materials. This includes college transcripts (*if foreign degree, include proof of U.S. equivalency and the transcript translated into English, if necessary*), resume, copy of abstract of thesis, and listing of publications;
10. Letter from the supervisor stating why they wish to hire the foreign national; and
11. If applicable, for foreign national in the U.S. in another visa status, copies of their previous I-94, Departure Record and Receipts are attached.

If you have any questions concerning this matter, please do not hesitate to call me at (xxx) xxx-xxxx.

Sincerely,

Name
Title

Enclosures

APPENDIX B
~Transmittal Letter – Extension of H-1B Status~

U.S. Citizenship and Immigration Services
(use appropriate address)

To Whom It May Concern:

The United States Department of Agriculture, Agricultural Research Service submits **an original and one copy** of the following documentation in support of an extension of H-1B status for **(NAME)** as a nonimmigrant worker.

1. Form I-129, Petition for a Nonimmigrant Worker;
2. H Classification Supplement to Form I-129;
3. H-1B Data Collection and Filing Fee Exemption Supplement (no fee required for ARS)
4. Filing Fee for Form I-129: check # _____, dated, _____ for \$320.00.
5. Form ETA-9035, Approved Labor Condition Application.
6. Letter from the supervisor explaining the reasons for the extension.
7. Copies of the Form I-94, Nonimmigrant Arrival/Departure Record.
8. Form I-539, Application to Extend/Change Nonimmigrant Status for Family Members *(if applicable, fee paid by foreign national)*

If you have any questions concerning this matter, please do not hesitate to call me at (xxx) xxx-xxxx.

Sincerely,

Name
Title

Enclosures

APPENDIX C
~Transmittal Letter – Notification of Separated Employee~

U.S. Citizenship and Immigration Services
(*Use appropriate address*)

To Whom It May Concern:

This is to inform you that the following worker(s), who was (were) employed by our agency under (TN or H-1B) status, has (have) resigned from our agency prior to the expiration of their appointment and are no longer employed by The United States Department of Agriculture, Agricultural Research Service (ARS).

Name	Petition #	Last day of employment with ARS
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If you have any questions regarding this matter please call me at (xxx) xxx-xxxx.

Sincerely,

Name
Title

Appendix D
~Transmittal Letter – Changing J-1 Status to H-1B Status~

U.S. Citizenship and Immigration Service
(*use appropriate address*)

To Whom It May Concern:

The United States Department of Agriculture, Agricultural Research Service submits an original and one copy of the following documentation in support of an H1-B petition for (NAME) as a non-immigrant worker.

1. Form I-129, Petition for a Nonimmigrant Worker;
2. H Classification Supplement to Form I-129;
3. H-1B Data Collection and Filing Fee Exemption Supplement (no fee required for ARS);
4. Base Petition Fee: check # _____, dated _____, for \$320;
5. Fraud Prevention and Detection Fee: check # _____ dated _____, for \$500 (*if applicable*);
6. Form I-907, Request for Premium Processing Service Fee: check # _____, dated _____, for \$1000 (*if applicable*);
7. Entrance-On-Duty Letter;
8. Certified Labor Condition Application Form, ETA-9035;
9. Copies of application materials. This includes college transcripts (*if foreign degree, include proof of U.S. equivalency and the transcript translated into English, if necessary*), resume, copy of abstract of thesis, and listing of publications;
10. Letter from the supervisor stating why they wish to hire the foreign national; and
11. If applicable, for foreign national in the U.S. in another visa status, copies of their previous I-94, Departure Record and Receipts are attached.
12. Copy of Certificate of Eligibility for Exchange Visitor (J-1) Status, Form DS-2019 or IAP-66 – front and back

If you have any questions concerning this matter, please do not hesitate to call me at (xxx) xxx-xxxx.

Sincerely,

Name
Title

Enclosures

APPENDIX E
~Transmittal Letter – Extension of a TN Visa Holder~

U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

To Whom It May Concern:

This is to request a renewal of the TN visa of Dr. *(name)*. Their admission number expires *(date)*.

Dr. *(name)* began employment with the Agricultural Research Service, *(research unit name)*, *(city, state)*, on *(date)*. He/she holds a full-time *(title of position)*, GS-*(series)*-(*grade*), research associate position through *(date)*. His/her current salary is \$, per annum.

(Sample paragraph) Dr. 's position required completion of a Ph.D. in (scientific discipline). The duties assigned to this position include initiating, planning and conducting investigations toward understanding how (tailor to the position – sample follows – fungal biocontrol agents or its products induce gene expression in plant tissues.) Knowledge and skills required include knowledge of (scientific disciplines – sample follows – plant physiology, plant pathology, biochemistry, and plant/fungal interactions.) Responsibilities include independently selecting established methods and procedures, developing novel techniques and approaches as needed, conducting assigned research, and preparing reports and manuscripts.

A copy of Dr. 's I-94 form is attached, along with a copy of his/her initial employment offer letter, educational documentation, and a check for \$320 to cover the renewal cost for the TN visa.

If you have any questions, please contact me on (xxx) xxx-xxxx or by e-mail at xxx.xxx@xxx.xxx.xxx

Sincerely,

Name
Title

Enclosures